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*UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY*

PAMELA WILLIAMS, as Administrator and
Administrator Ad Prosequendum of the
ESTATE OF LAWRENCE LEROY
WILLIAMS and PAMELA WILLIAMS,
Individually,

Plaintiff,

v.

ST. JOSEPH'S REGIONAL MEDICAL
CENTER, DR. HOSSAIN, WALDEMAR
SILVA, M.D., BENEDICTA JIMENEZ,
R.N., MARY ANN YUMUL, R.N.,
KATHLEEN HORTELAN, R.N., VALERIE
SIFUENTES, PCA, JOHN DOE M.D.-1
(Attending Physician at Approximately 9:30
p.m. on 3/16/2014), JOHN DOE, M.D.-1
(Attending Physician at Approximately 9:30
pm on 3/16/2014) JOHN DOE, M.D.-2
(Physician co-signing Dr. Hossain's 3/17/12
note timed at 1:20 a.m.), JANE DOE, R.N.-1
(Nurse involved at time Plaintiff hit his head
on I.V. pole), JOHN DOE, M.D. 3-10, JANE
DOE M.D. 1-5, JOHN DOE R.N. 1-5.
JANE DOE, R.N. 2-5, JOHN DOE 1-10,
JANE DOE 1-10, fictitious names whose
present identities are unknown,

Defendants.

HON.

Civil Action No.

NOTICE OF REMOVAL
OF CIVIL ACTION

To: Clerk, Superior Court of New Jersey
Law Division
Passaic County
77 Hamilton Street
Paterson, NJ 07505-2018

Douglas S. Grossbart, Esq.
Seigel Capozzi Law Firm, LLC
505 Goffle Road
Ridgewood, NJ 07450
(Attorneys for the Plaintiff)

Evelyn C. Farkas, Esq.
Farkas & Donohue
25A Hanover Road, Suite 320
Florham Park, NJ 07932
(Attorneys for Defendant St. Joseph's Regional Hospital and Medical Center and all identified health care provider defendants *except* Waldemar Silva, M.D.)

Michelle M. Smith, Esq., Clerk
Office of the Superior Court Clerk
Richard J. Hughes Justice Complex
25 W. Market Street, 6th Floor North Wing
P.O. Box 971
Trenton, NJ 08625

PLEASE TAKE NOTICE that the case of *Williams v. St. Joseph's Regional Medical Center, et al.*, previously pending in the Superior Court of New Jersey, Law Division, Passaic County, assigned Docket Number L-000289-15, is hereby removed to the United States District Court for the District of New Jersey, pursuant to the provisions of 28 U.S.C. §§ 1442(a)(1), 2679(d) and 42 U.S.C. § 233(c). The United States of America is hereby substituted for Defendant Waldemar Silva, M.D., pursuant to 28 U.S.C. § 2679(d)(2) and 42 U.S.C. § 233(c) and (g). The United States, now substituted as a defendant in this matter, through its attorney, Paul J. Fishman, United States Attorney for the District of New Jersey (Allan B. K. Urgent, Assistant United States Attorney, appearing), states as follows upon information and belief:

1. The Plaintiff named Waldemar Silva, M.D., as a defendant in the Complaint in the above-captioned action, which was filed in the Superior Court of New Jersey, Law Division, Passaic County, on January 29, 2015. Service of process has not been effected upon the United States in the manner specified in and required under Fed. R. Civ. P. 4(i). Copies of the Summons, the Complaint and all documents delivered therewith are attached as Exhibit A.

2. The Plaintiff has demanded damages, interest and costs of suit for injuries allegedly sustained as the result of tortious conduct of the named defendants.

3. At all times relevant to this Complaint, Dr. Waldemar Silva was a deemed employee of the Public Health Service pursuant to 42 U.S.C. § 233(g). *See* Exhibit B (Declaration of Meredith Torres).

4. Pursuant to 2679(d)(2) of the Federal Tort Claims Act, 42 U.S.C. § 233(c) and 28 C.F.R. § 15.4, the United States Attorney has certified that Dr. Waldemar Silva was acting within the scope of his employment with the Paterson Community Health Center, a federally deemed health center, at all times relevant to the allegations in the Complaint. A Certification of Scope of Employment is attached as Exhibit C.

5. Sections 233(a) and (g) of Title 42 of the United States Code, as amended by the Federally Supported Health Centers Assistance Act of 1995, and Section 2679(b) of Title 28 of the United States Code, as amended by the Federal Employees Liability Reform and Tort Compensation Act of 1988, provide that the Federal Tort Claims Act (“FTCA”) is the exclusive remedy for tort claims against the United States. Dr. Waldemar Silva has personal immunity and the United States is the only cognizable and proper defendant as to the Plaintiff’s state law tort claims alleged against him in this action. Moreover, as a result of the Certification of Scope of Employment, this action is now deemed to be brought against the United States.

6. The United States District Courts have exclusive jurisdiction over tort actions filed against the United States under the FTCA. 28 U.S.C. § 1346(b).

7. Federal law directs that “[u]pon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a State court *shall be removed without bond at any time before trial* by the Attorney General to the district court of the United States for the district and division embracing the place in which the action or proceeding is pending.” 28 U.S.C. § 2679(d)(2) (emphasis added). On information and belief, no trial date for this matter has been set by the state court.

8. Accordingly, the United States District Court for the District of New Jersey has exclusive jurisdiction over this action under 28 U.S.C. § 1346(b), and this action is properly removed to this Court pursuant to 28 U.S.C. §§ 1442(a)(1), 2679(d)(2) and 42 U.S.C. § 233(c).

9. No answer to the Complaint has been filed in the state court on behalf of Dr. Waldemar Silva or the United States. Upon information and belief, a default was entered in the Superior Court against Dr. Waldemar Silva on July 2, 2015.

10. A copy of the Answer to the Complaint filed by Defendants St. Joseph’s Regional Hospital and Medical Center (improperly plead as St. Joseph’s Regional Medical Center), Dr. Hossain, Bendicta Jimenez, R.N., Mary Ann Yumul, R.N., Kathleen Hortelano, R.N., and Valerie Sifuentes, PCA, is attached as Exhibit D.

12. A copy of this Notice of Removal will be filed with the Clerk of the Superior Court of New Jersey, Law Division, Passaic County. Copies of the Notice of Removal will also be served on all parties that have appeared in the action in accordance with 28 U.S.C. § 1446(d).

THEREFORE, in accordance with 28 U.S.C. §§ 1442(a)(1) and 2679(d)(2), and 42 U.S.C. § 233(c), the above-captioned action brought in the Superior Court of New Jersey, Law Division, Passaic County, is hereby removed to the United States District Court for the District of New Jersey for further proceedings.

Dated: July 16, 2015

Respectfully submitted,

PAUL J. FISHMAN
United States Attorney

By: *s/Allan B. K. Urgent*

ALLAN B. K. URGENT
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that I caused to be served a copy of the within Notice of Removal and all referenced attachments by FedEx on July 16, 2015, upon the following:

Clerk, Superior Court of New Jersey
Law Division
Passaic County
77 Hamilton Street
Paterson, NJ 07505-2018

Douglas S. Grossbart, Esq.
Seigel Capozzi Law Firm, LLC
505 Goffle Road
Ridgewood, NJ 07450
(Attorneys for the Plaintiff)

Evelyn C. Farkas, Esq.
Farkas & Donohue
25A Hanover Road, Suite 320
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(Attorneys for Defendant St. Joseph's Regional Hospital and Medical Center and all identified health care provider defendants *except* Waldemar Silva, M.D.)

Michelle M. Smith, Esq., Clerk
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25 W. Market Street, 6th Floor North Wing
P.O. Box 971
Trenton, NJ 08625

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge, information and belief.

Executed on this 16th day of July, 2015

s/Allan B. K. Urgent

ALLAN B. K. URGENT
Assistant United States Attorney